

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION AT COLUMBUS**

LELAND SMILEY,

Petitioner, :

Case No. 2:23-cv-00960

- vs -

District Judge James L. Graham
Magistrate Judge Michael R. Merz

EARLENA SHEPHERD, et al.,

Respondents.

REPORT AND RECOMMENDATION

Petitioner Leland Smiley brought this action for a writ of habeas corpus *pro se* pursuant to 28 U.S.C. § 2254. It is before the Court for initial review under Rule 4 of the Rules Governing § 2254 Cases which provides the Clerk must promptly forward the petition to a judge under the court's assignment procedure, and the judge must promptly examine it. If it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court, the judge must dismiss the petition and direct the clerk to notify the petitioner.

Petitioner avers that on March 20, 2021, he was transferred against his will to the North Carolina prison system and into the custody of Respondents at Maury Correctional Institution in Maury, North Carolina (Petition, ECF No. 1, PageID 1). He claims he was convicted in Ohio and asks to be returned to Ohio.

28 U.S.C. § 2241 grants federal courts the authority to issue writs of habeas corpus “within

their respective jurisdictions.” The writ must be issued to the person who has custody of the petitioner. But in this case, Petitioner is in the custody of prison authorities in North Carolina, over whom this Court does not have jurisdiction.

It is therefore respectfully recommended that the Petition be dismissed without prejudice so that Petitioner can re-file in the North Carolina federal court which has territorial jurisdiction of his place of confinement.

March 16, 2023.

NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within fourteen days after being served with this Report and Recommendations. Because this document is being served by mail, three days are added under Fed.R.Civ.P. 6, but service is complete when the document is mailed, not when it is received. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. A party may respond to another party’s objections within fourteen days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. #

s/ Michael R. Merz
United States Magistrate Judge